(2022) 01 KL CK 0196

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 10835, 27494 Of 2021, 4823 Of 2020, 679 Of 2022

M/s Kalyan Silks Thrissur Pvt. Ltd — APPELLANT

Vs

Assistant Labour Officer Mini Civil Station, Thodupuzha P.O., Idukki 685 584 — RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Minimum Wages Act, 1948 — Section 19, 20, 20(1), 20(2), 20(3)
Industrial Disputes Act, 1947 — Section 25, 33C, 33C(2)

Citation : (2022) 01 KL CK 0196

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : E.K.Nandakumar, M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, Shilpi M.Lal, Asok M.Cherian

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J.

1. The question that arises for resolution is whether the Authority under the Minimum Wages Act, 1948 can entertain a complaint filed by the

Inspector under section 20(2) of the Act, alleging non-payment of minimum wages by an employer.

2. When the Inspectors appointed under the Minimum Wages Act, 1948 (for short 'the Act') filed applications alleging that the writ petitioners in these

writ petitions who are the employers, refused to pay the minimum wages to its respective employees, the employers claimed that there is no

jurisdiction for the Authority under the Act to determine such a question. W.P.(C) No.10835 of 2021 is treated as the leading case and the facts of the said case alone are narrated in this judgment.

3. Petitioner is running a textile business, having several showrooms all over the State. The Assistant Labour Officer, who is the Inspector appointed

under section 19 of the Act, conducted an inspection on the establishment of the petitioner on 20.12.2019 and alleged that wages paid by the petitioner

to 31 employees were less than the minimum wages fixed for the period, June 2018 to November 2018. The Inspector filed an application before the

Authority appointed under section 20 of the Act, as MWA No.45 of 2019, alleging that in spite of show-cause notice dated 19.04.2019, alleging non-

payment of minimum wages to its employees, no satisfactory reply was furnished and hence a direction is to be issued under section 20(3) of the Act

for payment of the differential wages.

4. Pursuant to receipt of notice, petitioner filed a counter-statement stating that the employees had never raised a complaint against non-payment of

minimum wages. While denying the allegations, petitioner also raised the question of maintainability of the complaint under the Act and requested

consideration of the said question as a preliminary issue.

5. Petitioner raised the question of maintainability, alleging that there is no jurisdiction for the Authority under the Act to consider the complaint against

non-payment of the minimum wages. The question of maintainability was considered as a preliminary issue, and the Authority decided against the

petitioner, by Ext.P5 order. By the impugned order, it was held that the Authority had the jurisdiction to decide the claim and the application was found

maintainable under section 20(2) of the Act.

6. Since identical issues are involved in the connected three writ petitions, W.P.(C) No.27494 of 2021 and W.P.(C) No.679 of 2022 filed by the very

same petitioner except W.P.(C) No. 4823 of 2020, all the four writ petitions were heard together. Ext.P5 is the order impugned in W.P.(C) No.10835

of 2021, W.P.(C) No.27494 of 2021 and W.P.(C) No.4823 of 2020, while in W.P.(C) No.679 of 2022, Ext.P4 is the order assailed.

7. Sri.N.Nandakumar, learned Senior Counsel, duly instructed by Adv. Pooja Ramachandran vehemently contended that a complaint at the instance of

the Inspector is not maintainable under the Minimum Wages Act as the remedy of an aggrieved employee is to initiate proceedings under the

Industrial Disputes Act or before other authorities and not through a complaint before the Authority under the Act. It was argued that the power under

section 20 is only to fix the rate of wages and not to adjudicate on the quantum of wages paid or payable. According to the learned Senior Counsel, in

cases where there is an alleged short payment of wages lesser than the minimum wages fixed, the remedy is to move the Labour Court under section

33(C) of the Industrial Disputes Act, 1942 or under the Payment of Wages Act, 1936. The learned Senior Counsel further relied upon the decisions in

Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and Others (AIR 1969 SC 1335), which was reiterated by the Supreme

Court in Manganese Ore (India) Ltd. v. Chandi Lal Sadu and Others (1991 1 LLM 304) apart from the decisions in Union of India v. Kameshwar

Dubey and Others (1988 (2) LLJ 302), Gulab Govindrao LanjewarÂ v. MaharashtraÂ State Road Transport Corporation and Another (1996 (1) LLJ

308).

8. Sri. M.P. Mathew, the learned counsel for the petitioners in two of the writ petitions, endorsed the submissions of the learned Senior Counsel Sri.

E.K.Nandakumar.

9. Sri. Ashok M. Cherian, the learned Additional Advocate General, on the other hand, contended that, section 20 of the Act confers power upon the

Authority to consider a claim of payment of wages to the employees less than the minimum wages. He further asserted that without an opportunity to

decide the question whether minimum wages are being paid by an establishment or not, the provisions of section 20 would be redundant and practically

remain as a dead letter. The decision of the Supreme Court in Town Municipal Council, Athani (supra), does not apply to the facts of the present

case. The Additional Advocate General further submitted that distinction in the aforementioned case was dealt with in a judgment of the Jharkhand

High Court in the State of Jharkhand thro' Department of Labour Employment and Training, Ranchi and Others v. Nirmal Singh [(2005) II LLJ 345]

which was taken up in an appeal before the Supreme Court and was dismissed as per the judgment in Ext.R2(b).

10. I have considered the rival contentions. The sole question arising for deliberation is whether a complaint filed by the Inspector under section 20(1)

of the Act alleging payment of wages by an employer to its employees at a rate lesser than the minimum wages fixed is maintainable or not.

11. A glance at the scope and purport of the Act is beneficial while considering the issue raised in this litigation. The Minimum Wages Act, 1948, is

undoubtedly a welfare legislation. The object of the Act is to fix minimum rate of wages for various types of employment mentioned in Part I and Part

II of the Schedule to the Act. Provision is made for fixing the minimum wages for such employment as per section 3 of the Act, while the procedure

for fixing the minimum wages is specified in section 5 of the Act. On fixing the minimum wages for an employment, the appropriate Government is

bound to publish the minimum wages by notification in the Official Gazette. The wages so fixed shall come into force within three months from the

date of issue of the notification.

12. When a notification fixing minimum wages has come into force, section 12 of the Act stipulates that every employer is bound to pay wages at a

rate, not less than the minimum rate of wages fixed for such employment by the notification, without any deductions. The mandate for payment of a

minimum rate of wages for an employee in a scheduled employment without any deductions stipulated in section 12 of the Act is further bolstered by

section 25, which prohibits an employee from relinquishing or contracting out of the minimum wages. The said provision stipulates that, if

relinquishment from the minimum rate of wages is done through a contract or an agreement, then such a contract or agreement is statutorily deemed

to be null and void.

13. The statute also provides for the appointment of Inspectors under section 19 for the purpose of the Act and to exercise various functions. An

Inspector appointed under section 19 of the Act is entitled to enter the premises of any scheduled employment and verify the registers and other

records. Section 20 of the Act deals with adjudication of claims and provides that all claims relating to payment of minimum rate of wages can be

adjudicated, either by an application filed by an employee or at the instance of a legal practitioner or by any official of a registered trade union or even

by an Inspector. The aforesaid persons can apply for a direction specified in subsection (3) of section 20. The Forms are also stipulated under the

Rules. Form VII is the form prescribed for an application to be filed by the Inspector. When such an application is filed, the authority appointed under

the said section will be entitled to adjudicate upon such a complaint and thereafter, is, even entitled to ensure that such minimum rate of wages are

paid by bringing the differential amount of wages to be paid to the employee.

14. For a better comprehension, section 20 of the Act is extracted as below:

â??20 Claims

(1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central

Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or

any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims

arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under

clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14, to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a registered

trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the authority appointed under sub-section

(1), may apply to such authority for a direction under sub-section (3):

PROVIDED that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable:

PROVIDED FURTHER that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient

cause for not making the application within such period.

Â (3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer, or give them an opportunity of being

heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under

this Act, direct -

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the authority may think fit, not exceeding ten times the

amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the authority may think fit, not

exceeding ten rupees,

and the authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the

disposal of the application.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty

rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered -

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by the authority as a Magistrate, or

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(7) Every authority appointed under sub-section (1) shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), for the

purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed

to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).â?? (emphasis supplied)

15. The following significant features can be culled out of the above extracted provision:

(i) All claims arising out of payment of less than the minimum rates of wages can be considered by the Authority.

(ii) the employee or a legal practitioner or an official of a registered trade union, or an Inspector, can apply under the section.

(iii) the application can be for a direction to pay to the employee the difference in the actual amount paid and the minimum rate of wages payable, if the claim

relates to payment less than the minimum rates of wages, and in other cases, the payment of the amount due to the employee.

(iv). The Authority considering the claim can direct the differential wages to be paid, compensation and even penalty.

(v) the amount directed to be paid can be recovered as if it were a fine imposed by a Magistrate.

16. The above mentioned five features extracted from section 20 of the Act, leaves no room for doubt that all claims relating to the payment of a

minimum rate of wages are entitled to be adjudicated by the authority appointed under the Act, who can direct payment of the differential wages from

the minimum wages fixed for the employment. Even recovery of the amount directed to be paid, can also be resorted to, by the authority after

adjudicating the claim. To confine the power of adjudicating a claim under section 20(2) of the Act to only a right to fix the minimum rate of wages

would, in my opinion, render the very provision itself redundant and otiose.

17. The cardinal rule of construction of statutes is that they should be construed according to the intention expressed in the statute itself. If the words

of the statute are themselves precise and unambiguous, then no more is necessary than to expound them in their ordinary and natural sense. When the

language of the statute is plain and clear, then the literal rule of interpretation has to be applied. If the language of the Statute is plain and clear and

allows of only one meaning, the same should be given effect to. (see Vijay Narayan Thatte and others v. State of Maharashtra and others [(2009) 9

SCC 92])

18. The words employed in section 20 of the Act are plain and unambiguous. A literal interpretation of section 20, leaves no room for doubt nor does it

lead to any absurdity. On the other hand, the interpretation canvassed on behalf of the petitioner would lead to absurd results, where section 20 would

become meaningless, toothless, and contrary to the legislative intent. The words â??all claims arising out of payment of less than the minimum rate of

wagesâ?? in section 20(1) cannot be interpreted as confined merely to identifying the employment where rates of Minimum wages are fixed. If

section 20 of the Act is so construed, there was no requirement for including a provision in the Statute to direct payment of the differential wages, as

is provided under section 20(3) of the Act. In fact, if the said section is interpreted to mean only conferring a right to identify the employment where

the minimum wages have been fixed or not, the provision will have no meaning or effect. Such an interpretation that reduces the Statute to a dead letter or as ineffective, ought to be avoided.

19. Further, merely because there are remedies available under other statutes also, like the Industrial Disputes Act or the Payment of Wages Act, the

same by itself cannot persuade this Court to conclude that section 20 of the Act cannot consider the claims alleging payments lesser than the minimum

rate of wages. In this context, it is apposite to bear in mind that under the Payment of Wages Act, the question is not whether minimum rate of wages

are paid or not, but whether the entire wages due to an employee has been paid or not. Similarly under Industrial Disputes Act, section 33C(2) does

not provide an opportunity for consideration of a disputed claim. Though the Act is not intended to ensure payment of wages, the provisions can be

utilized for enforcing payment of minimum rates of wages when fixed for an employment.

20. However, the learned Senior Counsel for the petitioners vehemently stressed upon the decisions in Town Municipal Council, Athaniâ??s case

(supra) and Manganese Ore (India) Ltd. case (supra) and canvassed that the power under section 20(1) is only to adjudicate on the question whether

the minimum rate of wages have been fixed for the scheduled employment or not, and in cases where the minimum rate of wages have been fixed for

an establishment, necessarily the remedy for the employee or others is to move other appropriate statutory forums.

21. In order to appreciate the contentions, based on Town Municipal Council, Athani's case (supra), it is necessary to have a closer scrutiny of the

aforesaid decision. The issue in the said case arose from four applications filed before the Labour Court by workmen of the Municipal Council, Athani

under section 33C(2) of the Industrial Disputes Act, 1947. The claim was with respect to overtime work, washing allowance, and work done on

weekly off days. The Labour Court computed the amounts due to the workmen and directed the Municipal Council to make the payment, which was

challenged before the High Court. The main challenge before the High Court was that the amounts claimed by the workmen could have been raised

as a claim under section 20(1) of the Act and that the jurisdiction of the Labour Court is not available for the nature of claim raised in the said case

especially, since the claim had become time barred under the Minimum Wages Act. The following observation of the Supreme Court is relevant since both sides relied upon it:

â??We have mentioned these provisions of the Minimum Wages Act, because the language used at all stages in that Act leads to the clear inference that Act is

primarily concerned with fixing of rates - rates of minimum wages, overtime rates, rate of payment for work on a day of rest - and is not really intended to be an Act

for enforcement of payment of wages for which provision is made in other laws, such as the Payment of Wages Act No. 4 of 1936 and Industrial Disputes Act No. 14

of 1947. In Section 20(1) of the Minimum Wages Act also, provision is made for seeking remedy in respect of claims arising out of payment of less than the

minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of subsection 1 of

Section 13 or of wages at the overtime rate under Section 14. This language used in Section 20(1) shows that the Authority appointed under that provision of law

is to exercise jurisdiction for deciding claims which relate to rates of wages, rates for payment of work done on days of rest and overtime rates. If there be no

dispute as to rates between the employer and the employee, Section 20(1) would not be attracted. The purpose of Section 20(1) seems to be to ensure that the

rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is made to make payments at lower

rates, the workmen are given the right to invoke the aid of the authority appointed under Section 20(1). In cases where there is no dispute as to rates of wages

and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to a workman or not,

the appropriate remedy is provided in the Payment of Wages Act.â?? (emphasis supplied)

22. The underlined portion in the above-extracted observations of the Supreme Court indicate that the rates of wages fixed under the Act are bound to

be complied with by the employers while making payments. Further, if any attempt is made to pay wages at a rate lower than those prescribed, a statutory right is given to invoke the aid of the Authority under section 20(1) of the Act. The observation â??if there be no dispute as to rates between

the employer and the employee, Section 20(1) would not be attractedâ? in the above extracted portion cannot be understood or given a meaning

contrary to the statute and extricated from the context and even the subsequent observations in the same judgment. The aforesaid observation, when

read along with the next sentence, clearly brings out the meaning that, if there was no dispute on the rates at which the wages were being paid, then

the Act has no application. This Court is of the view that the decision in Town Municipal Council, Athani's case (supra), does not lay down a

proposition that even when there is a payment of wages lesser than the minimum rate of wages fixed, the provisions of section 20 of the Act cannot

have any application.

23. An illustration can explain the above better. Assume a situation where the minimum wages payable in an establishment was fixed at Rs.5,000/- per

month, but the wages paid to an employee was Rs.6,000/- per month. In the above situation, if the employer pays only Rs.5,500/-, the employee or the

inspector cannot raise a claim under section 20(1) of the Act, since there is no dispute on the rate of minimum wages being paid to the employee. The

wages paid in such circumstances, though less than the wages due to him, is, still more than the minimum wages fixed. In the above illustration, if the

employee was being paid only Rs.4,500/- instead of Rs.6,000/- then the said wages being less than the minimum rate of wages of Rs.5,000/-, a claim

can be filed under section 20(1) of the Act. In the former case, the employee will be entitled to raise a claim only under the Payment of Wages Act or

under the Industrial Disputes Act, for not paying the actual wages due to the employee.

24. As far as the decision in Manganese Ore India Ltd. case (supra) is concerned, the issue involved therein was whether the monetary value of the

grain supplied at concessional rates and the amount paid as attendance bonus could be included and counted as minimum wages payable to the

employees. The issue was raised by the workmen before the Labour Court under section 33C(2) of the Industrial Disputes Act. In such a scenario,

the Supreme Court relied upon the decision in Town Municipal Council, Athaniâ??s case (supra) to hold that the Labour Court rightly exercised jurisdiction under the said statutory provision.

25. In this context, the observations of the Supreme Court in Steel Authority of India Limited and Another v. Jaggu and Others [(2019) 7 SCC 658] is

highly beneficial. After referring to the decision in Town Municipal Council, Athaniâ??s case (supra), the Supreme Court observed that â?? Section

20 of the Minimum Wages Act, 1948 is primarily enacted to resolve disputes about the rates of wages, rates of payment of work done on

days of rest and overtime rates and to ensure that the rates of wages which are notified by the appropriate Government for various

categories of employees under the Minimum Wages Act are to be strictly complied with by the employer in making payments and if any

payment is made at the rates lower than the minimum rates of wages prescribed by the appropriate Government, the remedy has been

provided to the workmen/employee to invoke section 20(1) of the Act and being a self-contained code and a beneficial legislation, it is a

social protection to ensure and secure adequate living wage in the interest of public and looking to the nature of enquiry postulated under

the scheme of the Minimum Wages Act, 1948, there appears no scope of enquiry to examine the principles of equal pay for equal work

which is a dispute to be determined by an adjudicatory mechanism provided under the law.â?? (empahsis supplied)

26. In view of the above observations also, this Court is of the considered view that the decision in Town Municipal Council Athani's case (supra)

does not lay down a proposition that when there is payment of wages at a rate lesser than the minimum rate of wages fixed for an employment, a

claim under section 20(1) of the Act is not maintainable. On the contrary, the decisions in Town Municipal Council Athani's case (supra) and that in

Steel Authority of India Ltd. case (supra), observed that when there is a payment of wages lesser than the minimum rate of wages payable for an

employment, a claim can be raised under section 20(1) of the Act.

27. Reference to the Division Bench judgment of the Jharkhand High Court in State of Jharkhand thro' Department of Labour Employment and

Training, Ranchi and Others v. Nirmal Singh [(2005) II LLJ 345] is also apposite in this context. In the said decision an almost identical situation arose,

where an inspector under the Act filed an application alleging that the employer was paying wages lesser than the minimum wages fixed under the

statute. The order of the Authority under section 20 of the Act, directing the payment of wages including penalty, was set aside by the learned single

Judge of the Jharkhand High Court, stating that there was no jurisdiction to decide such a claim before the Authority. In appeal, the Division Bench set

aside the judgment of the learned Single Judge after holding that the decision in Town Municipal Council Athani, did not lay down the proposition that

such claims are not maintainable before the authority under section 20 of the Act. It was observed that â??The above decision, in our view, also

supports the purposive interpretation of Section 20(2) of the Act to make it effective and to make it as legitimate tool in the hands of an

employee who has not been paid the minimum wage in spite of the minimum wage being fixed.â??

28. In fact, in the counter affidavit filed by the second respondent in W.P.(C) No.4823 of 2020, it was pointed out that the judgment in the Nirmal

Singhâ??s case (supra) was challenged before the Supreme Court and by order dated 09-08-2004, the Special Leave Petition was even dismissed by

the Supreme Court.

29. In the light of the above deliberations, this court is of the view that the complaint filed by an Inspector appointed under the Act alleging payment of

wages to an employee at a rate lesser than the minimum rate of wages fixed is maintainable under section 20(1) of the Act before the Authority

constituted under the Minimum Wages Act, 1948. Accordingly, I do not find any reason to interfere with the orders impugned in all these writ

petitions.

The writ petitions are therefore dismissed.

